

ROS.26171

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DEBORAH TOBIAS, Plaintiff,	§ § §	
V.	§ § §	CIVIL ACTION NO. _____
DD'S DISCOUNT, Defendant.	§ § §	

DEFENDANT'S NOTICE OF REMOVAL

Defendant **DD'S DISCOUNT** (hereinafter "Defendant" or "DD's"), pursuant to 28 U.S.C. §§ 1332, 1441, and 1446(a), files this Notice of Removal.

I. INTRODUCTION

1. This removal is based on diversity jurisdiction. Plaintiff Deborah Tobias ("Plaintiff") has sued DD's for negligence/premises liability and resulting personal injury damages arising from an incident that allegedly occurred on June 5, 2021, in Mesquite, Dallas County, Texas. Plaintiff filed suit on October 6, 2021, in the 160th Judicial District Court, Dallas County, Texas.

2. Plaintiff is now, and was at the time of removal and at the time of the filing of the lawsuit, an individual resident and citizen of the State of Texas.

3. In contrast, DD's is now, and was at the time of removal and at the time of the filing of the lawsuit, a corporation incorporated under the laws of the States of Virginia, with its principal place of business, including its corporate headquarters, in the State of California. DD's is now, and was at the time this action commenced, a citizen of the State of California and of no other state.

4. In addition, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In particular, Plaintiff's Original Petition seeks monetary relief "over \$250,000.00 but not more than \$1,000,000.00." Thus, on its face, Plaintiff's Petition plausibly seeks more than \$75,000.00.

5. Defendant timely files this Notice of Removal within 30 days of service of Plaintiff's Original Petition. This action has been on file for less than one year.

II. GROUNDS FOR REMOVAL: DIVERSITY JURISDICTION

A. Diversity Jurisdiction Exists

6. Under 28 U.S.C. § 1441(a), "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . . to the district court of the United States for the district and division embracing the place where such action is pending." As demonstrated below, this action is removable under 28 U.S.C. §1441(a) because this Court has original jurisdiction pursuant to 28 U.S.C. § 1331.

7. Removal is proper because this lawsuit involves a controversy between citizens of different states.

8. Plaintiff is a citizen of Texas. Westlaw records show that Plaintiff is 70 years of age. Her present address is a multi-family residence in Mesquite, Dallas County, Texas, which she has maintained as her address since 2009. Records further show phone records for Plaintiff identify the area codes 214 and 972 in Texas. No records suggest that Plaintiff has lived any place other than the State of Texas since 2003.

9. Defendant DD's Discount is a Virginia corporation with its principal place of business at Pleasanton, California.

10. In addition, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. 28 U.S.C. §§ 1332, 1441. Specifically, Plaintiff seeks "monetary relief over

\$250,000.00 but not more than \$1,000,000.00” in this lawsuit. *See Plaintiff’s Original Petition,* ¶ 3. Moreover, she seeks damages for past and future medical expenses, past and future physical pain and suffering and mental anguish, past and future physical disfigurement, and past lost wages and future loss of earning capacity. *Id.*, ¶ 14. The amount in controversy thus exceeds \$75,000.00, exclusive of interest and costs.

B. Removal Is Timely

11. Plaintiff filed suit on October 6, 2021. Defendant was served with suit papers on October 20, 2021. Defendant timely files this Notice of Removal within 30 days from the date of service of Plaintiff’s Original Petition. In addition, the suit has been pending for less than a year. Therefore, removal of this action is timely.

III. COMPLIANCE WITH REMOVAL PROCEDURES

12. Attached to Defendant’s Notice of Removal are the following documents required by 28 U.S.C. § 1446(a) and N.D. TEX. LOC. R. 81.1 (these documents are hereby incorporated by reference in all respects):

- A. Civil Cover Sheet;
- B. Supplemental Civil Cover Sheet;
- C. Defendant’s Index of Documents:
 - 1. State Court Docket Sheet;
 - 2. Plaintiff’s Original Petition, filed October 6, 2021;
 - 3. Citation on DD’s Discount issued October 20, 2021, and served October 20, 2021; and
 - 4. Defendant’s Original Answer, filed November 15, 2021.

13. Venue is proper in this district pursuant to 28 U.S.C. § 1441(a) because the United States District Court for the Northern District of Texas, Dallas Division, embraces Dallas County, Texas, where the state court action was filed and is currently pending. Specifically, Plaintiff filed

suit in the 160th Judicial District Court in Dallas County, Cause No. DC-21-15123.

14. Defendant will immediately file a copy of this Notice of Removal with the clerk of the state court in which the state court action is pending.

15. In the event that Plaintiff seeks to remand this case, or the Court considers remand *sua sponte*, Defendant respectfully requests the opportunity to submit such additional argument or evidence in support of removal as may be necessary.

16. Defendant has requested a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Defendant requests this action be immediately and entirely removed upon filing of this Notice of Removal to the United States District Court for the Northern District of Texas, Dallas Division, and for such other and further relief to which it may be justly entitled.

Respectfully submitted,

**FLETCHER, FARLEY
SHIPMAN & SALINAS, LLP**

/s/ Fernando P. Arias
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that the foregoing instrument was electronically filed via the Court's CM/ECF system and a true and correct copy of same was delivered to all counsel of record in accordance with the FEDERAL RULES OF CIVIL PROCEDURE on this the 19th day of November, 2021.

/s/ Fernando P. Arias

FERNANDO P. ARIAS